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Fifty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1375th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 27 October 1994, at 3 p.m.

Chairman: Mr. ANDO

later: Mr. WENNERGREN

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* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1375/Add.1.

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GE.94-19719 (E)

The meeting was called to order at 3.15 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of the note by the Secretariat on the Committee's methods of work under article 40 of the Covenant (document without a symbol; English only).

2. Mr. AGUILAR URBINA, Chairman/Rapporteur of the Working Group on Article 40, drew attention to paragraph 11 of the note, drafted in anticipation of certain problems that were expected to arise during the consideration of initial reports at the Committee's fifty-third session. The Committee would then have before it an initial report from the United States of America which was the most comprehensive and detailed report ever received. Initial reports were increasingly coming to resemble periodic reports in terms of their length and the amount of detailed material they included. After serious consideration, the Working Group on Article 40 was proposing a modification of the Committee's approach to initial reports whereby it would more closely correspond to consideration of periodic reports. Instead of each member asking questions individually, a list of issues would be prepared by a country rapporteur. The discussion would thus be focused on a series of salient issues and the time available for consideration of the report could be used to full advantage. If the Committee approved of the proposed approach, it could be adopted for all initial reports from the fifty-third session onwards.

3. Mrs. EVATT said she hoped that if the new procedure was implemented, States parties would still be accorded two days to prepare their answers after the meeting at which questions were raised. Such preparations were particularly useful when a State was appearing before the Committee for the first time. The list of issues, if one was to be prepared, should be divided into three sections dealing with interrelated topics, as was the case for the lists for consideration of periodic reports. The first sentence in paragraph 11 ("The Working Group notes that States parties are increasingly submitting initial reports of a very comprehensive nature which resemble in every aspect periodic reports") was not entirely accurate and should be deleted.

4. Mr. POCAR endorsed the Working Group's proposal concerning the consideration of initial reports. The current practice for initial reports was simply a hold-over from the Committee's early days: by the time second periodic reports had begun to be submitted, a new methodology had evolved. If another methodology was adopted now for the consideration of initial reports, the States parties scheduled to appear before the Committee at its fifty-third session should immediately be apprised of it.

5. Mr. HERNDL said he agreed with the Working Group that the consideration of initial and periodic reports should be harmonized. The new approach to initial reports would facilitate detailed discussion, while at the same time making it easier for the State party to reply to questions. He agreed that, if a new procedure was adopted, the States parties concerned should be

informed immediately. Finally, he suggested a minor change to the sentence in paragraph 11 setting out the reasons for the change in procedure: instead of saying the methodology used in considering initial reports "does not allow for a proper examination", the sentence should read "does not facilitate a proper examination".

6. Mr. BAN welcomed the idea of periodically reviewing the Committee's working methods and said he was generally favourable to the new approach to consideration of initial reports proposed by the Working Group. It would be preferable, however, to apply that approach on a case-by-case basis, rather than to institute it henceforth for all initial reports. Not all initial reports were so detailed or voluminous as to warrant a change in the methodology used successfully for many years past.

7. Mrs. HIGGINS said she would hesitate to endorse the proposed new methodology, for there was some merit in having an open-ended, wide-ranging discussion at the first meeting between the Committee and representatives of the State party. In that way, both sides could come to know each other, and the subsequent discussion would be facilitated by that knowledge. She did not agree that the new approach would make the burden of answering questions less onerous for States, for instead of a general discussion, they would be faced straight away with a series of extremely pointed queries requiring specific answers.

8. Mr. LALLAH recalled that the current methodology for consideration of initial reports had been established when both the Committee and States parties had been entirely new to the exercise. It had the merits, however, of giving States parties an overall idea of their failings and achievements, and of enabling members of the Committee to ask questions drawn from their own experience, thereby exploiting the rich variety of legal systems represented among them. Mrs. Higgins had been right to draw attention to the value of an introductory session enabling the participants in the dialogue to come to know one another. He was therefore not in favour of the new methodology proposed by the Working Group.

9. Mr. Ban had proposed applying that methodology, not universally, but on a case-by-case basis. He did not agree with that proposal either, for he believed all States should be treated equitably, and that any system adopted should be applied in a uniform manner. The question required much further reflection, for the Committee's decision would set the pattern for consideration of initial reports for many years to come.

10. Mr. BRUNI CELLI said that consideration of an initial report was a learning experience: it was the first contact a State had with the Committee, and it provided instruction to the State on how to draft its future reports. A reading of the Committee's final comments on initial reports showed that most often they were faulted for being too short, for not going into enough detail: just the opposite, in fact, of what was described in the first sentence of paragraph 11. The defence of the material in an initial report required significantly less expertise and research than did that of a periodic report. For all those reasons, he believed the harmonization of approaches to the consideration of initial reports and periodic reports was not desirable.

11. Mrs. CHANET acknowledged that the system for consideration of initial reports was not entirely satisfactory and left room for improvement. The way to proceed, however, was not on a case-by-case basis: although that solution would be realistic and facilitate adaptation to the specific situation of countries, it could well be seen as discriminatory. A uniform system must be adopted for the consideration of initial reports. She did not favour the preparation of the same sort of lists as for periodic reports, because such lists were intended to elicit specific information on how a given situation had evolved since an earlier report had been considered. For initial reports, the lists of issues should be entirely different in nature. It might be useful for the Working Group to look into what questions were most often asked during the consideration of initial reports.

12. Mr. WENNERGREN agreed that harmonization of procedures for consideration of initial and periodic reports should not be sought, for the two exercises served different purposes. Consideration of an initial report was meant to provide an overall picture of how human rights were guaranteed in a country and what deficiencies existed in that area. A periodic report was intended to supplement the information gleaned from the initial report and to focus on progress made in respect of the deficiencies already identified. Perhaps a list of issues could be drawn up for initial reports comprising a single section, with members of the Committee free to ask any additional questions they wanted. That would constitute a good compromise and facilitate dialogue.

13. Mr. AGUILAR URBINA, replying to the comments made by Mr. Ban, said that the Working Group had thought about suggesting a case-by-case approach but had concluded that the treatment of initial reports must not be differentiated. The suggestion made by Mr. Wennergren was an interesting and viable compromise. A list of several general questions would serve to launch the dialogue and to focus it from the outset. Members of the Committee could then follow up with questions on areas of specific concern.

14. The CHAIRMAN, speaking as a member of the Committee, said it might well be worth streamlining the consideration of periodic reports in the light of the current discussion on initial reports. In any event, he agreed that different formats should be used for the two types of report. The specific ideas advanced by Mrs. Chanet and Mr. Wennergren concerning a new type of list for initial reports should be explored further. The Working Group should perhaps be instructed to prepare a "core" list of issues for consideration of initial reports.

15. Mr. LALLAH said that, over the years, the Committee had evolved into a more disciplined body. There were fewer instances now than in the early days of one member repeating the questions raised by another, and there were more concerted efforts to bring out issues that had not been covered. Repetition of questions did have some merit, however, in that it alerted States parties to problems that deeply preoccupied the Committee. Finally, the Committee should remember that its entire membership would be radically changed in the next few years. It should not tie the new Committee down to an immutable system, but should let the new members gain experience and later decide what was the best approach to the consideration of initial and periodic reports.

16. Mr. BRUNI CELLI said that the Committee could be flexible about the time it allowed for the consideration of initial reports; it was surely in order to set aside a third meeting for the purpose where necessary. A subject which the Working Group might usefully study was that of the uniformity of lists of issues prepared in connection with second, third and subsequent periodic reports; some creativity was perhaps called for in that area.

17. The CHAIRMAN said that there had been some progress with regard to the method of preparing the lists of issues. He noted that a majority of Committee members seemed to be opposed to the introduction of new procedures for dealing with initial reports and to think that the Committee should persevere with the existing procedure.

18. Mrs. CHANET agreed that a consensus was emerging in favour of maintaining the existing procedure until a better solution was found.

19. Mr. POCAR concurred, adding that the Working Group should consider itself authorized to explore possible solutions but should not be given a specific mandate to that effect. As for the time set aside for the consideration of initial reports, he agreed with Mr. Bruni Celli that the matter should be treated with flexibility and recalled that some initial reports had been disposed of in a single meeting whereas the consideration of others had required three or even four meetings.

20. Mr. EL SHAFEI said that the length of time required for the consideration of initial reports depended on such factors as the length and quality of the report, the size and composition of the delegation and the amount of information provided by other sources. The current practice was satisfactory but, if possible, initial reports should not be programmed for consideration on the first day of a session.

21. The CHAIRMAN explained that such programming was sometimes difficult to avoid in view of the Committee's very tight schedule; the point would, however, be kept in mind.

22. Mrs. HIGGINS said that she had no objection to the recommendation contained in the last sentence of paragraph 11, but would also be prepared to carry on with the existing procedure.

23. The CHAIRMAN, summing up the discussion, said that the Committee appeared to agree that there was no need to change the existing procedure for the consideration of initial reports or to issue any specific mandate to the Working Group in that regard; however, the Working Group should feel free to explore the question further. Noting that there were no comments on paragraph 12 of the secretariat's note, he invited the Committee to proceed to consider paragraph 13.

24. Mr. AGUILAR URBINA introduced the Working Group's recommendations on the equal status and human rights of women.

25. The CHAIRMAN remarked that, in view of the prominence given by the Committee to all matters pertaining to article 3 of the Covenant, it was difficult to see any need for new action.

26. Mr. PACAR, while generally agreeing with that view, remarked that the general comment on article 3 was weaker than many others and could perhaps be revised. However, the wording of recommendation (a) was not quite appropriate; recommendation (b) was already being implemented; and recommendation (c) was confusing, since the question of the human rights of women did not arise in relation to the provisions of each article.

27. Mrs. EVATT endorsed the previous speaker's comments, adding that the difficulty with regard to recommendation (c) could perhaps be overcome by referring to the "relevant" provisions of each article.

28. Mr. HERNDL said that the only provision of the Vienna Programme of Action directly applicable to treaty monitoring bodies was section II (b), paragraph 42, with which the Committee had complied fully at all times. He agreed with Mr. Pocar that the general comment on article 3 could be revised, special emphasis being placed on the question of discrimination against women, but did not think that it would be feasible to follow recommendation (a) as worded.

29. Mr. EL SHAFEI, referring to recommendation (c), associated himself with Mrs. Evatt's suggestion that the word "relevant" should be inserted before the words "provisions of each article", in the first sentence of the proposed new provision.

30. Mrs. EVATT wondered whether the purpose of recommendation (c) might not be met by including a specific reference to women in paragraph 4 (c) of the Committee's guidelines regarding the form and contents of initial reports from States parties (CCPR/C/5/Rev.1).

31. The CHAIRMAN said that the suggestions made had been noted and would be passed on to the next Working Group. Work on a revision of the general comment on article 3 might perhaps begin in 1995.

32. Mr. AGUILAR URBINA, introducing the Working Group's recommendation concerning comments of the Committee at the end of the consideration of reports by States parties (para. 14 of the Secretariat's note), drew attention to the possibility of summary records being abolished, as a result of which, taking into account the new format of the annual report, there would be no record of the final comments at all.

33. The CHAIRMAN, while noting the importance of the issue, appealed to members to take account of practical considerations. The preparation of final comments ought not to entail additional work for the Committee or the Secretariat.

34. Mrs. HIGGINS, referring to recommendation (d) at the bottom of page 5 of the document, said that she was in favour of heading G and did not think that any extra working time would be involved in preparing an expanded version of the suggestions and recommendations made. On the other hand, heading B would very often overlap with heading F, and the same was true of headings D and E, respectively.

35. Mr. WENNERGREN said that he was strongly in favour of the proposal in subparagraph (f) to invite States parties to report on measures adopted pursuant to the Committee's comments and suggestions, but was not sure what the "systematic basis" was to be: was it, as he hoped, the Working Group's intention that such an invitation should be included at the end of the Committee's final comments on State party reports?

36. Mr. AGUILAR URBINA, replying, confirmed that that was the Working Group's intention, since periodic reports hitherto had seldom given any information at all on specific measures adopted by States parties to implement the Committee's recommendations.

37. Mrs. EVATT, speaking as a former member of the Working Group and taking up points raised by Mrs. Higgins, said it was her understanding that heading B under subparagraph (d) would provide no more than a succinct overview of the principal themes on which consideration of the report focused. Heading D had been included to ensure that the Committee was seen to be fair and diligent in identifying any specific legislative or other measures adopted by a State party to promote implementation of the Covenant, without necessarily commenting in detail on them. That heading might overlap to some degree with the "Positive aspects" under heading E.

38. Mr. POCAR said that, in the light of what Mrs. Evatt had said, he still had doubts about including heading B, and that it was important to ensure that there was no overlap between the area covered by headings D, E and F. In considering whether or not to expand its comments, the Committee needed to bear in mind that they were to be regarded as summaries and needed to be read by States parties in conjunction with the summary records of the session.

39. With regard to the proposal under subparagraph (g), he said that it was important to ensure that the Working Group was not involved in the drafting of the final comments, and that those comments should be based entirely on the outcome of the consideration of the State party's report, not on a draft prepared in advance of discussions with the State party. To prepare the text of comments in advance might expose the Committee to charges that it had prejudged important issues and undermine the confidence of States parties in its openness and fairness.

40. The CHAIRMAN agreed that there was a danger of overlap between some of the headings. Perhaps the proposed headings should be regarded as no more than general recommendations for the guidance of those drafting the general comments.

41. Mr. LALLAH inquired whether the invitation proposed in subparagraph (f) would be extended to all States parties, and suggested that the list of issues should begin by asking what specific measures a State party had adopted since its previous periodic report pursuant to recommendations by the Committee, so as to create a link between the list of issues and the Committee's recommendations.

42. Mr. MAVROMMATIS, explaining some of the major considerations behind the proposed restructuring of the procedure for considering States parties' reports, said that an important aim was to save the Committee's time and in particular to ensure that reports could be dealt with in two meetings. To that end, the list of issues needed to be comprehensive in order to pre-empt as far as possible the need for additional questions. Ideally, the work should be done by a special rapporteur, possibly assisted by two other persons, on the basis of all the available material. They would be responsible for presenting a report to the Working Group and the Committee, and would ideally have the specialized knowledge required to add questions to the list should that be necessary. They would also bear responsibility for drafting the final comments with the assistance of the Secretariat, for which a formal time-limit might be imposed. Any comments by members of the Committee could be submitted in writing to the special rapporteur and his assistants, who would thus be thoroughly briefed on the members' views on the State party's report.

43. Such a procedure would ensure that the work was done more thoroughly and would leave more time available to the Committee for follow-up work, which could be more effective in promoting general respect for human rights than the work of the Committee on individual communications. It would also reduce some of the difficulties faced by certain States parties in answering questions.

44. With regard to the proposal in subparagraph (g), he shared the reservations expressed by Mr. Pocar and said that the same considerations applied to subparagraph (e): it was essential to avoid creating the impression that the Committee's comments were prepared in advance.

45. Mrs. HIGGINS agreed with Mr. Lalla's suggestion that the question on measures adopted since the previous periodic report should be the first on the list of issues.

46. With regard to the reservations on subparagraph (e) voiced by Mr. Pocar, her own interpretation was not that the Committee's comments would be drawn up in advance of discussions with States parties but simply that any comments agreed on by the Committee would eventually be incorporated in a formal document produced by the Working Group.

47. Mr. AGUILAR URBINA, commenting on Mr. Pocar's suggestion that the Committee's comments did not need to be expanded because States parties could obtain summary records of meetings, pointed out that a proposal had been made to abolish summary records, which might therefore become unavailable in the near future.

48. Mrs. CHANET said that the Committee might well be handicapped in its forthcoming consideration of the second periodic report of the Libyan Arab Jamahiriya (CCPR/C/28/Add.16) by the fact that there had been no summary records during previous discussion of that report.

49. With regard to subparagraph (g), she, too, had strong reservations about preparing the Committee's comments in advance. It might lead, as it had on a previous occasion when she had chaired the Working Group on Article 40, to leaks to the press or to non-governmental organizations (NGOs), creating an

impression that the Committee had prejudged the issues, undermining the confidence of States parties in the confidentiality of the Committee's deliberations and, in some cases, providing a convenient pretext to certain States parties not to appear before the Committee. She urged the Committee to drop the proposal.

50. Mr. EL SHAFEI thanked the Working Group on Article 40 for the working paper it had submitted. He noted that many of the suggestions made under paragraph 14 appeared to concern the format of the Committee's comments rather than their substance, and in some cases appeared to add to the Working Group's workload and responsibilities.

51. One general question which arose in connection with the proposals in the paragraph was whether there was firm evidence that Governments had been paying closer attention to the Committee's comments; the Committee should not simply assume that that had been the case.

52. With regard to specific subparagraphs, he found himself in general agreement with the proposal in subparagraph (e) provided that plenary meetings were not adversely affected by the need for some members to attend Working Group meetings. Turning to subparagraph (f), he suggested that setting a new date for the submission of a State party's next periodic report would require a change to the rules of procedure. Furthermore, if a report was found to be deficient, the Committee should demand a new, redrafted report, not a resubmission of the old one, and that needed to be reflected clearly in the wording. Subparagraph (g) appeared to some extent to overlap with the list of issues in calling for information on measures adopted to implement the Covenant. In his view, the proposal in subparagraph (h) that the Working Group should take on the task of "making appropriate recommendations in order to maintain an effective dialogue with the State concerned" went too far beyond the Working Group's existing terms of reference.

53. The CHAIRMAN suggested that the Committee needed to focus more closely on the central issue of whether the format of the Committee's comments ought to be changed.

54. Mrs. EVATT noted that there appeared to be a guarded consensus among members that the Committee's general comments needed to be expanded. Subparagraph (e) had given rise to misunderstandings: its intention was merely that the Working Group should draw up the list of headings. Subparagraph (g) could be deleted, since the task of identifying measures adopted to implement the Covenant could be performed by a special rapporteur or by individual members. She agreed with Mr. El Shafei that in subparagraph (f) it should be specified that States parties whose reports had been found deficient were required to submit a new, redrafted report.

55. She fully agreed with Mr. Mavrommatis that the time spent by the Committee in discussing its final comments would be reduced if members' observations were submitted to the Working Group in writing and if a special rapporteur who could concentrate in greater depth on specific countries was appointed.

56. Mr. EL SHAFEI said that some of the suggestions made, for example regarding the date of submission of the subsequent periodic report, were in the nature of procedural matters that needed to be kept separate from the Committee's comments.

57. The CHAIRMAN said that the consensus appeared to be to continue with current practice for the time being. The Working Group on Article 40 should be asked to reformulate its proposals in more concrete form at its next meeting in the light of the Committee's discussion and Mr. Mavrommatis' suggestions before resubmitting them to the Committee.

58. He invited the Committee to take up paragraph 15, relating to preparation of lists of issues.

59. Mrs. EVATT said that the paragraph, which embodied one of the suggestions she had made to the Working Group in July 1994, constituted a step towards the goal of preparing lists of issues a session in advance. However, that would mean that the reports to be considered would have to be available two sessions in advance, which at present was a major stumbling-block. Other committees had solved the problem by scheduling working group meetings after a session. While that remained a possible option, it would be better to begin by trying to determine which reports would be coming up for consideration two sessions hence and then decide whether a list of questions could be drawn up ahead of time. The proposal was only a minor one intended to facilitate the Committee's work; there would be no need to bring it to the attention of States parties at the current stage.

60. The CHAIRMAN said the principal difficulty would be the paucity of information available at such an early stage. Furthermore, holding a working group meeting after the session would entail extra expense.

61. Mrs HIGGINS said she feared the proposal would be unworkable. Although it might be advantageous to States parties to receive lists of issues well in advance, the Committee's task would not thereby be facilitated. The two working groups would be out of synchronization with each other and likely to find it less easy to achieve a quorum. Scheduling a meeting of the Working Group on Article 40 to consider lists of issues immediately after a session would allow its members very little time to digest the documents before them, especially in the case of lengthy reports. Furthermore, NGOs found it difficult enough already to fit in with the existing cycle; increasing the time scale would reduce their input further.

62. Mrs. EVATT said that since the suggestion appeared impracticable it should be shelved for the time being.

63. It was so decided.

64. The CHAIRMAN, referring to paragraph 16, said that the question of computerization had been discussed on many occasions. Since the only solution was additional manpower, nothing could usefully be done about it for the time being. He suggested that further consideration of the matter should be deferred.

65. It was so decided.

66. The CHAIRMAN invited the Committee to consider the proposal in paragraph 17 to change the name of the Committee's annual publication to "Human Rights Committee Official Records".

67. Mrs. EVATT said the Working Group of the previous session, which had been given the task of finding a suitable shorter name, had felt that it was correct to refer to the publication as Official Records and that the name of the Committee should come first for ease of identification.

68. Mr. HERNDL said he would prefer the appellation "Yearbook", following the example of the International Law Commission whose annual records bore the same name, even though the term "Official Records" would be in line with current editorial practice in the United Nations.

69. Mrs. HIGGINS said it seemed to her immaterial which title was used.

70. Mr. TISTOUNET (Secretary of the Committee) said that some years previously, on the grounds that confusion was being caused with the Yearbook of the United Nations, it had been decided to change the name of the publication to "Official Records" at the request of the United Nations publications service. The Official Records for 1988-1989 and 1989-1990 had been sent to press and it was hoped to complete editing of the English version of the more recent volumes by July 1995.

71. The CHAIRMAN suggested that, in view of the lack of consensus, a final decision on the name should be deferred.

72. It was so decided.

The public part of the meeting rose at 5.40 p.m.